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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ZELBY INDUSTRIES, L.L.C.

Petitioner,

v.

U.S. SURFING, L.P.

Registrant.



04-10-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

Cancellation No.

**PETITION FOR CANCELLATION**

Mark: THE SURFER'S CARD

Goods: Financial services, namely, credit card and debit card services,  
including providing consumers with credit in connection with the  
sale of merchandise and services

Reg. No.: 2122520

Reg. Date: December 16, 1997

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513  
**BOX TTAB FEE**

Sir:

Petitioner, Zelby Industries, L.L.C. ("Petitioner"), a Rhode Island  
corporation doing business at 100 Medway Street, Providence, Rhode Island  
02906, believes that it is, or will be, damaged by Registration No. 2122520,  
owned by U.S. Surfing, L.P. ("Registrant"), a California corporation doing

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business at 33047 Calle Aviador, Unit E, San Juan Capistrano, CA 92675 and hereby petitions to cancel same.

As grounds for the cancellation, Petitioner alleges that:

1. Registrant is the owner of record of Registration No. 2122520 for THE SURFER'S CARD, which covers financial services, namely, credit card and debit card services, including providing consumers with credit in connection with the sale of merchandise and services and issued December 16, 1997 ("Registrant's Mark").

2. Petitioner owns pending application Serial No. 75/694109 for the mark SURF CARD, which covers "credit card and debit card services and for providing an on-line link to commercial, retail and informational web sites of other companies and individuals; providing search engines for obtaining data on a global computer network" filed on April 30, 1999, and has a bona fide intention to use the mark in commerce or in connection with the identified goods or services.

3. On information and belief, Registrant has abandoned Registrant's Mark.

4. Petitioner will be harmed by the continued registration of Registrant's Mark. The U.S. Patent & Trademark Office issued a final office action against Petitioner's Mark, citing Registrant's Mark as a barrier to the registration of Petitioner's Mark under Section 2(d) of the Lanham Act.

Wherefore, Petitioner prays Registration No. 2122520 be canceled.

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Petitioner encloses with this petition a filing fee of \$300. If that filing fee is found to be insufficient for any reason, please charge the deficiency to our Deposit Account No. 06-0196.

Respectfully submitted,

Date: April 10, 2002

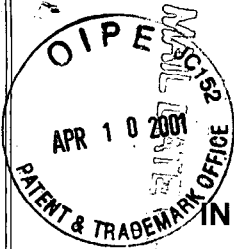
By: 

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Attorney Docket: 08725.0030

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Zelby Industries, L.L.C.  
Serial Number: 75/694109  
Filing Date: April 30, 1999  
Mark: SURF CARD

Examining Atty: Gineen M. Bresso, Esq.  
Law Office: 111

ASSISTANT COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

ATTN: BOX TTAB NO FEE

**REQUEST TO SUSPEND APPEAL AND  
REMAND APPLICATION FOR FURTHER EXAMINATION**

Pursuant to TMEP §1213 of the Trademark Rules of Practice, Applicant respectfully requests that the appeal proceedings in connection with the above-identified application be suspended and that the application be remanded to the Examining Attorney for further examination.

On March 21, 2002, the Examining Attorney issued an Appeal Brief wherein she withdrew the refusal to register Applicant's mark SURF CARD under Section 2(d) based on Registration No. 2041196, SURF CARDZ. The Examining Attorney also requested that the refusal to register based on Registration No. 2122520, THE SURFER'S CARD be affirmed. As shown in the attached Petition for Cancellation, Applicant has petitioned that Registration No. 2122520, THE SURFER'S CARD, be cancelled because, on information and belief, the Registrant of the mark has abandoned it.

Because the only remaining grounds for the Examining Attorney's refusal to register

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Applicant's mark is based on Registration No. 2122520, the cancellation of the Registration would obviate the need for this appeal. Applicant respectfully requests that this appeal be suspended until a determination is reached on the petition to cancel Registration No. 2122520.

Respectfully submitted,

Zelby Industries, LLC

Dated: April 10, 2002

By: 

Lawrence R. Robins  
Attorney for Applicant

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